

921 KAR 1:430. Child support administrative hearings.

RELATES TO: KRS Chapter 13B, 15.055, 154A.060(2)(g), 205.710, 205.712, 205.745, 205.7685, 205.769, 205.778, 237.110(4)(f), 341.392, 341.420, 405.411, 405.440(4), 405.450(1), (2), (5), 405.463, 405.465, 405.467, 405.470, 405.490(4)

STATUTORY AUTHORITY: KRS 13B.170, 194A.050(1), 205.712, 45 C.F.R. 303.35, 42 U.S.C. 666

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law, qualify for the receipt of federal funds, or to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 42 U.S.C. 666 requires each state to have in effect procedures to increase the effectiveness of the Child Support Enforcement Program. 45 C.F.R. 303.35 requires the agency administering the Child Support Enforcement Program to develop a procedure for administrative reviews of child support cases for individuals with complaints. KRS 13B.170 authorizes an agency to promulgate administrative regulations that are necessary to carry out the provisions of KRS Chapter 13B. This administrative regulation establishes the administrative hearing procedures used by the cabinet in the administration of the Child Support Enforcement Program.

Section 1. Availability of a Hearing. (1) An opportunity for an administrative hearing shall be provided to an individual aggrieved by an action or inaction:

- (a) On the part of the Child Support Enforcement Program; and
- (b) That affects the child support case of the individual.

(2) An individual requesting an administrative hearing shall have the option to designate a representative to act on behalf of the aggrieved party for the hearing process, such as:

- (a) Legal counsel;
- (b) A relative; or
- (c) Any other person.

(3) An administrative hearing shall be conducted by an administrative hearing officer assigned by the Division of Administrative Hearings, Families and Children Administrative Hearings Branch:

- (a) In the county of residence for the appellant or child; or
- (b) By telephone or at an alternate location, if the appellant:
 - 1. Is unable to travel; and

2. Requests alternate hearing arrangements at least five (5) calendar days in advance of the scheduled hearing.

(4) If the appellant or authorized representative speaks a language other than English, the cabinet shall ensure that interpreter services are provided for the administrative hearing.

(5) Child support enforcement staff shall schedule and hold an informal interview or conference with an aggrieved individual:

- (a) Within ten (10) calendar days of receiving the individual's hearing request;
- (b) Prior to an administrative hearing being scheduled; and
- (c) To attempt resolution of the dispute.

(6) If the informal conference does not resolve the issue, the hearing request shall be sent to the Families and Children Administrative Hearings Branch as specified in Section 2 of this administrative regulation for scheduling.

Section 2. Request for a Hearing. (1) An individual shall request an administrative hearing

by:

- (a) Completing and submitting a CS-180, Request for Administrative Hearing;
 - (b) Submitting a written request; or
 - (c) Making an oral request, which is then transferred into a written request within the timeframes specified in subsection (4) of this section.
- (2) An administrative hearing request shall be submitted to the:
- (a) Child support contracting official's office in the appellant's county of residence; or
 - (b) Child Support Enforcement's central office.
- (3) The count of days specified in subsection (4) of this section shall begin from the date of:
- (a) Issuance, if the notice is sent by first class mail; or
 - (b) Receipt, if the notice is personally served or sent by certified mail.
- (4) A written request for an administrative hearing shall be considered timely if received by the cabinet within:
- (a) Ten (10) calendar days of:
 - 1. An income withholding notice; or
 - 2. A notice of intent to boot a vehicle, in accordance with KRS 205.745(9);
 - (b) Fifteen (15) calendar days of a notice of withholding from unemployment insurance, pursuant to KRS 341.392 and 341.420;
 - (c) Twenty (20) calendar days of:
 - 1. An initial notice of monthly support obligation, in accordance with KRS 405.440(4);
 - 2. An order to withhold assets, in accordance with KRS 405.490(4);
 - 3. A request for denial or suspension of a license or certificate;
 - 4. A lien notice, in accordance with KRS 205.745(7); or
 - 5. A notice to place the obligor's name on the delinquent listing; or
 - (d) Thirty (30) calendar days of a:
 - 1. Modified notice of monthly support obligation, in accordance with KRS 405.450(5);
 - 2. Notice that an obligation amount was reviewed without change, in accordance with KRS 405.450(5); or
 - 3. Notice regarding the collection of past-due support in accordance with KRS 154A.060(2)(g), 205.712(17), and 205.769.
- (5) In accordance with KRS 205.712(13), an individual shall be granted an administrative hearing based upon a mistake in fact, such as an incorrect:
- (a) Person identified as an obligor; or
 - (b) Current or past due support obligation.
- (6) An appellant or authorized representative may withdraw an administrative hearing request by submitting a written request to the:
- (a) Families and Children Administrative Hearings Branch, as specified in Section 3 of this administrative regulation; or
 - (b) Child support enforcement office that accepted the original request for an administrative hearing.

Section 3. Hearing Notification. (1) The Division of Administrative Hearings, Families and Children Administrative Hearings Branch shall acknowledge an administrative hearing request.

- (2) A notice of an administrative hearing shall:
- (a) Comply with the requirements of KRS 13B.050(3);
 - (b) Specify the name, address, and phone number of the person to notify if an appellant is unable to attend the scheduled hearing; and
 - (c) Specify that the hearing request shall be dismissed if an appellant or the authorized representative fails to appear for an administrative hearing without good cause as specified in

Section 4(3) of this administrative regulation.

(3) Pursuant to KRS 405.450(1), the cabinet shall schedule an administrative hearing within sixty (60) calendar days of an individual's hearing request.

(4) An administrative hearing shall be conducted in accordance with KRS Chapter 13B.

(5) An individual that fails to appear for a scheduled hearing shall receive notification to provide good cause within ten (10) calendar days.

Section 4. Denial or Dismissal of an Administrative Hearing Request. (1) A hearing request shall be denied or dismissed if the:

(a) Request is not based on a mistake of fact as specified in Section 2(5) of this administrative regulation;

(b) Request is untimely and good cause, as defined in subsection (3) of this section, is:

1. Not claimed; or
2. Found not to exist;

(c) Appellant submits a written request to withdraw the administrative hearing request; or

(d) Appellant or an authorized representative fails to appear for the scheduled hearing without:

1. Notifying the cabinet prior to the hearing; or
2. Establishing good cause for failure to appear, as defined in subsection (3) of this section.

(2) A claim of good cause for an untimely hearing request or failure to appear at an administrative hearing shall be established within ten (10) calendar days of receipt of a notice to provide good cause.

(3) Upon receipt of a good cause claim, a hearing officer shall determine if the appellant:

(a) Was away from home during the entire filing period;

(b) Is unable to read or comprehend the right to request an administrative hearing on the notice received;

(c) Moved, resulting in a delay in receiving or failure to receive the notice in the required time period;

(d) Was suffering from a serious illness;

(e) Was caring for an immediate household member who had a serious illness; or

(f) Was not at fault for the delay of the request, as determined by the hearing officer.

(4) The cabinet shall notify an appellant of the dismissal of an administrative hearing request by sending a recommended order of dismissal.

Section 5. Appellant's Rights. (1) An appellant or an appellant's legal representative shall have the right to examine and copy case material pertinent to the dispute before or during the hearing process in accordance with KRS 13B.090(3).

(2) The cabinet shall release case information as specified in subsection (1) of this section to the appellant's authorized representative if the appellant provides written authorization that is:

(a) Signed in the presence of child support enforcement staff who shall also sign as a witness; or

(b) Notarized.

(3) An appellant or representatives shall have the right to:

(a) Examine, prior to the hearing:

1. The list of witnesses to be called during the hearing;
2. Evidence to be presented at the hearing; and
3. Other information in the cabinet's possession that pertains to the hearing;

(b) Present witnesses or documents to support the appellant's claim; and

(c) Appeal the decision of the final order of the hearing to Circuit Court in accordance with KRS 13B.140.

Section 6. Obligation Pending a Hearing or Appeal. (1) If a hearing request is based on the dispute of:

(a) An initial notice of monthly support obligation, the obligation shall be stayed until a final order of the secretary is issued, in accordance with KRS 405.450(2); or

(b) The findings of a modification review of an administratively established obligation, the amount of the existing obligation shall be:

1. Enforceable; and
2. Paid by the obligor pending receipt of the final order.

(2) If the action taken on behalf of the Child Support Enforcement Program is:

(a) Upheld, the obligation amount shall be retroactive to the effective date on the notice of monthly support obligation; or

(b) Found to be incorrect, the cabinet shall return to the obligor any overpayment made since the date the administrative hearing was requested.

(3) If an appellant files an appeal of the final order with the Circuit Court, the appellant shall be obligated to pay the amount listed on the notice of monthly support obligation while the appeal is pending.

Section 7. Recommended Order. (1) After the hearing has concluded, the hearing officer shall submit to the secretary of the Cabinet for Health and Family Services a recommended order in accordance with KRS 13B.110 that:

(a) Summarizes the facts of the case;

(b) Specifies the address where a party to the hearing may send an exception to the recommended order; and

(c) Identifies the:

1. Findings of fact;
2. Conclusions of law;
3. Supporting evidence; and
4. Applicable state and federal laws and administrative regulations.

(2) A copy of the recommended order shall be sent to the:

(a) Appellant or representative;

(b) The secretary; and

(c) Designated staff of the Child Support Enforcement's central office.

Section 8. Written Exceptions. If a party to the hearing disagrees with the recommended order, within fifteen (15) days from the date the recommended order is mailed, the party may file with the secretary written exceptions in accordance with KRS 13B.110(4).

Section 9. Final Order. (1) Within ninety (90) days from the date the recommended order is mailed, a final order shall be issued by the secretary in accordance with KRS 13B.120.

(2) If the final order differs from the recommended order, the final order shall comply with KRS 13B.120(3).

Section 10. Incorporation by Reference. (1) "CS-180, Request for Administrative Hearing", 7/14, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Department for Income Support, Child Support

Enforcement, 730 Schenkel Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (34 Ky.R. 1909; Am. 2150; eff. 3-19-08; 35 Ky.R. 1931; 2060; eff. 3-11-2009; TAm eff. 6-4-2014; 40 Ky.R. 2642; eff. 8-1-2014; 43 Ky.R. 1692; 1981; eff. 6-2-2017.)